

Suit Against CIA Dismissed; Judge's Opinion Is Secret

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In what may be an unprecedented court action, a federal judge here has dismissed a lawsuit against the Central Intelligence Agency, but his opinion has not been released to lawyers for either side or to the public.

U. S. District Judge Gerhard A. Gesell issued the opinion — which now is locked in a U.S. District Court safe — after he was ordered by the U.S. Court of Appeals to accept secret affidavits from high-level government officials concerning the case.

In the same order, an appellate court panel of U. S. Circuit Judges J. Skelly Wright and Edward A. Tamm directed Gesell to issue "any further orders" in the case under seal.

Gesell dismissed the case Wednesday in a one-sentence order he placed in the public files. He said in that order that his reasons for dismissing the case were stated "in camera" (in his chambers) and would not be made a part of the public record.

The ruling was made in a suit filed by an organization known as the Military Audit Project, a private, non-profit group, which had asked the CIA to make public under the Freedom of Information Act any contracts or other documents concerning the Hughes Glomar Explorer project.

The project, which involved an attempt to retrieve a Russian submarine from the floor of the Pacific Ocean, was made public last year. The U. S. government has admitted financing the project, but contends that any further admissions concerning the project itself or the possible existence of documents about it would jeopardize national security.

Gesell's order ends more than 10 months of legal wrangling involving him, the plaintiffs and the government defendants over what details of the litigation could be made public.

As quickly as one month after the suit was filed, the government began attempting to file secret affidavits with Gesell.

Such one-sided proceedings are contemplated under the Freedom of Information Act and were used by another federal judge here in another suit involving other Glomar Explorer material. But Judge Gesell said in a written opinion last March that he felt such proceedings should be followed "only in the rarest ... special circumstances."

He said federal judges should not be placed in the position of conducting secret proceedings — which he compared to "star chamber" proceedings that are "alien to our entire jurisprudence" — as they can be under the FOI Act, and asked for further publicly filed affidavits.

Lt. Gen. Brent Scowcroft, who is President Ford's top national security adviser, then filed a public affidavit in which he said the disclosure of any more details about the Glomar Explorer project might prompt other nations offended by the project, to take "strong measures" that might

"endanger U.S. military and diplomatic personnel and businessmen overseas."

He said the executive branch gave its approval on Oct. 20, 1969, to the establishment of a classified U.S. government program "to accomplish certain secret tasks in furtherance of national security objectives," and that the program was assigned to a committee of the National Security Council.

The program "included the design, construction and operation of a ship which came to be known as the Hughes Glomar Explorer," Scowcroft added. The government contracted with the late Howard Hughes' Summa Corp. to construct the vessel, according to published reports.

After Scowcroft's affidavit was filed, Judge Gesell said he would "reluctantly" accept and review the requested Glomar documents out of the presence of the plaintiffs.

The government objected to that procedure, however, saying it would be an admission on their part that the documents even existed — a matter that the government considers classified. Instead, they won approval from the Court of Appeals to their suggestion that Gesell accept further secret affidavits as proof of the sensitivity of the matter.

After the appellate court order on Oct. 1, the government filed the additional secret affidavits with Gesell. The sworn statements came from CIA director George Bush, a State Department official, a White House official, a Defense Department official and two other persons whose identities were not disclosed in the public court records.

Gesell then directed the government attorney in the case to appear in his chambers on Oct. 18 for a presentation of evidence in the case. Gesell issued his opinion two days later.

The privately funded Military Audit Project is set up to monitor the spending of public funds by the defense and intelligence establishment. Attorney William Dobrovir has said in court records that the project is attempting to discover through its suit how much the government spent for the Glomar Explorer at the Hughes corporation made on it, and whether there were cost overruns, kickbacks, or other improprieties.